

FACTUAL HISTORY

On March 26, 2007 appellant, then a 44-year-old letter carrier, filed an occupational disease claim alleging that he had osteoarthritis in his right knee and ankle as a result of wear and tear from packing and unpacking a truck 100 times daily and from a previous meniscus injury.

Appellant submitted reports from Dr. Kevin Sumida, a Board-certified orthopedic surgeon, dated February 16, March 6 and April 3, 2007. Dr. Sumida diagnosed osteoarthritis of the knee with effusion and right meniscus tear. On March 6, 2007 he performed a right knee arthroscopy and chondroplasty to repair appellant's right knee medial meniscal tear.

In an April 29, 2007 statement, appellant attributed his osteoarthritic condition to performing his motorized collection duties on his assigned route from 1991 to 2002. He explained that constantly disembarking off the vehicle from a standing position to the pavement and climbing back onto the truck caused constant pounding on his right knee. Appellant noted that his right meniscus tear originated from a February 4, 2004 injury when he slipped and fell on the ice, which worsened as a result of frequent walking and climbing stairs in the performance of duty.³

In a May 30, 2007 decision, OWCP denied appellant's claim finding insufficient medical evidence to establish that his right knee or ankle condition was causally related to his federal employment.

On June 19, 2007 appellant requested an oral hearing before the Branch of Hearings and Review. On December 12, 2007 an oral hearing was held. Appellant submitted additional medical reports from Dr. Sumida.

In a December 14, 2007 report, Dr. Adrian L. Uy, a Board-certified internist, stated that for the past three years he had been treating appellant for knee problems that started in February 2007. He noted appellant's 2004 knee injury and subsequent surgery. Dr. Uy opined that appellant's current knee arthritis was a direct result of chronic repetitive injuries to the right knee.

By decision dated February 8, 2008, OWCP's hearing representative denied appellant's occupational disease claim finding that he failed to provide sufficient medical evidence to establish that his right knee and ankle conditions were causally related to factors of his employment. Although Dr. Sumida and Dr. Uy opined that appellant's injuries resulted from his employment, they failed to discuss any specific work duties that contributed to appellant's claimed condition.

On January 23, 2009 OWCP received appellant's reconsideration request.

In a March 3, 2008 report, Dr. Sumida repeated that appellant had been his patient since May 2006, underwent knee surgery and received physical therapy treatments. He noted that

³ The record reflects that appellant sustained a previous right knee injury on February 3, 2004 as a result of a slip and fall in the performance of duties.

appellant had difficulty climbing stairs or standing for a prolonged period of time and experienced extreme pain with squatting. Dr. Sumida stated that, because appellant's work required him to stand, walk and climb stairs, it was difficult for him to return to work any sooner.

In a March 4, 2008 report, Dr. Uy stated that he had treated appellant's right knee problems for the past three years. He noted the 2004 knee injury and 2007 knee surgery. Dr. Uy reported that appellant's knee condition had progressively worsened due to the nature of his employment and that the arthritis in his knee was the direct result of chronic repetitive injury while working at the employing establishment. He explained that appellant would get in and out of his postal truck, which primarily affected his right knee and appeared to be responsible for the repetitive injury.

In a March 4, 2009 decision, OWCP denied modification of its February 8, 2008 decision on the grounds of insufficient medical evidence establishing that his claimed right knee condition was causally related to his work activities.

In a letter dated February 26, 2010, appellant, through his representative, submitted a request for reconsideration. OWCP did not receive any additional evidence.

By decision dated August 24, 2010, OWCP denied appellant's request for reconsideration because he failed to raise arguments or submit evidence not previously considered sufficient to warrant reconsideration under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district OWCP.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must also be submitted within one year of the date of OWCP decision for which review is sought.⁷ A timely request for reconsideration may be

⁴ 5 U.S.C. § 8128(a); *see also* *W.C.*, 59 ECAB 372 (2008); *D.L.*, Docket No. 09-1549 (issued February 23, 2010).

⁵ 20 C.F.R. § 10.605; *see also* *R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.606(b); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a).

granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely but fails to meet at least one of the requirements for reconsideration, it will deny the request for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS

As noted, the Board does not have jurisdiction over the merits of this case. The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), to reopen his claim for review of the merits. In his February 26, 2010 request for reconsideration, appellant, through his representative, did not allege that OWCP erroneously applied or interpreted a specific point of law. He also failed to advance a relevant legal argument or to submit relevant and pertinent evidence not previously considered by OWCP. Appellant stated that he enclosed another report from Dr. Uy, but the record on appeal does not contain any additional medical report from Dr. Uy following the February 26, 2010 request for reconsideration. He did not submit any new and relevant medical evidence in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁰

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's February 26, 2010 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ The Board notes that appellant submitted additional evidence following the August 24, 2010 nonmerit decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the nonmerit decision of the Office of Workers' Compensation Programs dated August 24, 2010 is affirmed.

Issued: August 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board